

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

DAVID BRIAN MORGAN,

Petitioner,

v.

CARL BEAR, Warden,

Respondent.

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Case No. CIV-17-322-R

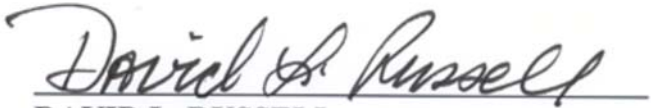
ORDER

Before the Court is the Report and Recommendation of United States Magistrate Judge Bernard M. Jones entered April 12, 2017. Doc. No. 8. No objection to the Report and Recommendation has been filed nor has an extension of time in which to object been sought or granted. Therefore, the Report and Recommendation of the Magistrate Judge is ADOPTED in its entirety and this matter is DISMISSED WITHOUT PREJUDICE.

Further, pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts, the undersigned denies Petitioner a Certificate of Appealability. Where a habeas petition is denied on procedural grounds, Petitioner is entitled to a COA only if he/she demonstrates that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Stack v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000). When a habeas petition is denied on the merits, Petitioner is entitled to a COA only if he/she demonstrates “that jurists of reason could disagree with the district court’s

resolution of his/her constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327, 123 S.Ct. 1029, 154 L.Ed.2d 931, 944 (2003) (*citing Slack v. McDaniel*, *supra*). Petitioner has not made either showing and is therefore not entitled to a COA.

IT IS SO ORDERED this 8th day of May, 2017.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE